Bala Subramaniyam a/l Mookapillai & Anor v Tetuan Raj Selva & Co & Ors

HIGH COURT (IPOH) — WRIT SUMMONS AA-24NCVC-136–03 OF 2018
ANSELM CHARLES JC
3 MARCH 2020

Land Law — Caveat — Setting aside order — Applicant applied for setting aside of order for removal and cancellation of caveat — Whether applicant entitled to intervene to apply for setting aside order of removal of caveat — Whether acts of applicants warranted setting aside an order for removal of caveat

This was an application by the second respondent, Perumal Sunderan a/l Vynthilingam in encl 14 to intervene and set aside an order of the court dated 15 May 2018 ('15 May 2018 order') in encl 9 which ordered the removal and cancellation of caveats lodged by the second defendant, Iruthaya Raj a/l Anthony Muthu Nadar, Anandaraju a/l Mookkapillai and Mookapillai Sdn Bhd. On 28 March 2018, the applicants filed an originating summons in encl 1 for the removal of registered private caveats. The applicants had filed a *perakuan segera* or certificate of urgency for the application to be expedited. On 15 May 2018, counsel informed the court that the letters informing the caveators of the hearing date on 15 May 2018 was sent. The second respondent and other caveators failed to attend court on 15 May 2018. The applicants then transferred two lots of the lands namely Lots 4805 and 4806 into their own names and not as administrators. The applicants then commenced to sell the two lots to one Sunderajan a/l Subramaniam who lodged the caveat on the lands on 26 Jun 2018. It was not disputed that the second respondent was not the only one who complained about not receiving the documents in respect of encl 1. The other caveators also made similar complaints. The court received a letter from one of the caveators named Mr Iruthaya Raj a/l Anthony Muthu Nadar, stating that he had never received the documents pertaining to the matter although the court had instructed the documents to be served on all parties and the matter be heard inter parte. The caveator claimed that the acknowledgment of receipt bearing the firm's stamp was forged. The caveator then applied to intervene to set aside the 15 May 2018 order ('encl 12'). Another caveator, Anandaraju a/l A Mookapilai had made a similar complaint in his affidavit in encl 102. The second respondent had applied to intervene to set aside encl 12 and the court allowed the application. The appellant appealed from the decision. Learned counsel for the applicants had relied on the case of *Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals* [2008] 2 MLJ 622; [2008] 2 CLJ 121 as it was contended that an application to intervene after judgment was given would not

A be entertained because the proceedings were no longer pending. It was further argued that the order which had been obtained had been perfected as shown in encl 9 as the proceedings were at an end and the second respondent should not be allowed to intervene.

B **Held**, allowing application in encl 14 and setting aside order of 5 May 2018 in encl 9:

(1) The court was of the view that *Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals* [2008] 2 MLJ 622; [2008] 2 CLJ 121 was not applicable as the court had ordered that encl 1 to proceed inter parte and that the second respondent together with other caveators was made parties to the proceedings. The court was of the view that to deprive the second respondent the right to intervene in the proceedings would ignore the very purpose of the court had ordered the matter be heard inter parte in the first place and for the caveators including the second respondent be given an opportunity to be heard. To do otherwise would condone any misrepresentation made with regards to the service of encl 1 on the second respondent. The court was not functus officio as the rights of the second respondent remained subsisting as the court was deprived of hearing the matter inter parte (see paras 23–24 & 32).

(2) The applicant's action would seem to run contrary to the reasons set forth in encl 3 which was to have an expedited hearing date for the benefit of the estate of Ponnamal a/p Ramasamy and the effective management of the estate for the benefit of the beneficiaries. Based on the facts that there was deception in the effecting of the service of encl 1 and the conduct of the applicants after the caveats were removed, the court was of the view that such a situation would warrant the court to set aside that 15 May 2018 order and reverted to the position before the said order was given. The court agreed with the second respondent's contention that the 15 May 2018 order should be set aside *ex debito justitiae* (see paras 28–30).

[Bahasa Malaysia summary

H Ini adalah permohonan oleh responden kedua, Perumal Sunderan a/l Vynthilingam dalam lampiran 14 untuk campur tangan dan mengetepikan perintah mahkamah bertarikh 15 Mei 2018 ('perintah 15 Mei 2018') dalam lampiran 9 yang memerintahkan penghapusan dan pembatalan kaveat yang didaftarkan oleh defendan kedua, Iruthaya Raj a/l Anthony Muthu Nadar, Anandaraju a/l Mookkapillai dan Mookapillai Sdn Bhd. Pada 28 Mac 2018, I pemohon mengemukakan saman pemula dalam lampiran 1 bagi pembatalan kaveat persendirian yang yang didaftarkan. Pemohon telah memfailkan perakuan segera agar permohonan tersebut dipercepatkan. Pada 15 Mei 2018, peguam memaklumkan mahkamah bahawa surat-surat yang memberitahu para pengkaveat bahawa tarikh pendengaran pada 15 Mei 2018 telah dihantar.

Responden kedua dan pengkaveat lain gagal hadir ke mahkamah pada 15 Mei 2018. Pemohon kemudian memindahkan dua lot tanah iaitu Lot 4805 dan 4806 ke atas nama mereka sendiri dan bukan sebagai pentadbir. Pemohon kemudian mula menjual kedua-dua lot itu kepada satu Sunderajan a/l Subramaniam yang mendaftarkan kaveat atas tanah-tanah tersebut pada 26 Jun 2018. Tiada dipertikaikan bahawa responden kedua bukan satu-satunya yang mengadu tidak menerima dokumen berkaitan lampiran 1. Pengkaveat yang lain juga membuat aduan serupa. Mahkamah menerima surat daripada salah seorang pengkaveat iaitu En Iruthaya Raj a/l Anthony Muthu Nadar, yang menyatakan bahawa beliau tidak pernah menerima dokumen-dokumen yang berkaitan dengan perkara itu walaupun mahkamah telah memerintahkan agar dokumen-dokumen tersebut diserahkan kepada semua pihak dan perkara tersebut mesti didengari secara inter parte. Pengkaveat tersebut mendakwa bahawa bukti penerimaan yang tertera cap firma itu adalah palsu. Pengkaveat tersebut kemudiannya memohon untuk campur tangan untuk mengetepikan perintah yang telah diberikan pada 15 Mei 2018 ('lampiran 12'). Seorang pengkaveat lain, Anandaraju a/l A Mookapilai telah membuat aduan serupa dalam afidavitnya di lampiran 102. Responden kedua telah meminta untuk campur tangan untuk mengetepikan lampiran 12 dan mahkamah membenarkan permohonan tersebut. Perayu mengemukakan rayuan terhadap keputusan tersebut. Peguam bagi pemohon merujuk kepada pada kes *Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals* [2008] 2 MLJ 622; [2008] 2 CLJ 121 kerana berpendapat bahawa permohonan untuk campur tangan setelah penghakiman diberikan tidak akan dilayan kerana prosiding telah selesai. Mereka juga telah berhujah bahawa perintah yang telah diperoleh telah disempurnakan seperti yang ditunjukkan dalam lampiran 9 memandangkan prosiding telah hampir berakhir dan responden kedua tidak boleh dibenarkan masuk campur.

Diputuskan, membenarkan permohonan dalam lampiran 14 dan mengenepikan perintah pada 5 May 2018 dalam lampiran 9:

(1) Mahkamah berpendapat bahawa *Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals* [2008] 2 MLJ 622; [2008] 2 CLJ 121 adalah tidak berkaitan kerana mahkamah telah memerintahkan agar lampiran 1 untuk diteruskan secara inter parte dan responden kedua bersama pengkaveat lain telah dijadikan pihak terhadap prosiding tersebut. Mahkamah berpendapat bahawa tindakan menidakkan hak campur tangan responden kedua di dalam prosiding akan menidakkan tujuan utama mahkamah mengarahkan perkara tersebut didengari secara inter parte dan hak untuk didengari para pengkaveat termasuklah responden kedua. Sekiranya dilakukan sebaliknya, ia akan membiarkan salah tanggapan yang dibuat berkaitan penyerahan lampiran 1 kepada responden kedua. Mahkamah tidak

functus officio kerana hak responden kedua tetap ada memandangkan mahkamah tidak lagi mendengar perkara tersebut secara inter parte (lihat perenggan 23–24 & 32).

(2) Tindakan pemohon adalah bertentangan dengan alasan yang dinyatakan dalam lampiran 3 iaitu untuk mempercepatkan tarikh pendengaran bagi harta pusaka Ponnamal a/p Ramasamy dan pengurusan harta pusaka yang berkesan untuk kepentingan benefisiari. Berdasarkan fakta bahawa terdapat penipuan dalam penyerahan lampiran 1 dan tingkah laku pemohon setelah kaveat dibatalkan, mahkamah berpendapat bahawa keadaan seperti itu akan menuntut mahkamah untuk mengetepikan perintah 15 May 2018 dan mengembalikan kedudukan sebelum perintah tersebut diberikan. Mahkamah bersetuju dengan pendapat responden kedua bahawa perintah 15 Mei 2018 harus diketepikan *ex debito justitiae* (lihat perenggan 28–30).]

Cases referred to

Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals [2008] 2 MLJ 622; [2008] 2 CLJ 121, FC (distd)

Lai Cheng Ooi v Lim San Peen & Anor and other appeals [2018] 5 MLJ 195; [2018] 7 CLJ 145, FC (refd)

Lai Cheng Ooi (f) (the executrix of the estate of Lee Tain Tshung @ Lee Thien Chiung, deceased) v Lim San Peen (liquidator for Naslei Enterprise Sdn Bhd) & Anor and other appeals [2017] 6 MLJ 218; [2017] 1 LNS 1390, CA (refd)

Legislation referred to

National Land Code Form 19B
Rules of Court O 15 r 6(2), O 32 r 6

Rasphal Singh (Rasphal Singh & Co) for the applicants.
Perumal Sunderan a/l Vythilingam (present in person) for the intervener.

Anselm Charles JC:

INTRODUCTION

[1] This is an application by Perumal Sunderan a/l Vythilingam (the second respondent) in encl 14 to intervene in this proceeding and to set aside an order of this court in dated 15 May 2018 ('the 15 May 2018 order') in encl 9 which ordered the removal and cancellation of caveats lodged by the second respondent, Iruthaya Raj a/l Anthony Muthu Nadar, Anandaraju a/l Mookkapillai and Mookapillai Sdn Bhd.

[2] The caveats concerned lands described in the following titles 'Geran No 82570, 82571, 82572 dan 82573 Lot No 4804, 4805, 4806 and 4807

Mukim Teluk Bharu, Daerah Bagan Datoh, Negeri Perak (previously under Geran 12359 Lot 1631 Mukim Teluk Bahru Daerah Hilir Perak) ('the lands')'.

PERTINENT BACKGROUND FACTS

[3] On 28 March 2018 the applicants, Bala Subramaniyam a/l Mookapillai and Vijayalatchumi a/p Mookapillai filed an originating summons (encl 1) for the removal of the following private caveats which were registered as follows:

(a) *nombor perserahan* 16166/2017 lodged by Iruthaya Raj a/l Anthony Muthu Nadar on 13 November 2017;

(b) *nombor perserahan* 13817/2017 lodged by Perumal Sunderan a/l Vythilingam on 29 September 2017;

(c) *nombor perserahan* 4957/2013 lodged by Mookapillai Sdn Bhd melalui pada 15 April 2013; and

(d) *nombor perserahan* 1969/2016 lodged by Anandaraju a/l Mookkapillai melalui pada 23 February 2016.

[4] The application first came up before this court on 13 April 2018. Counsel Mr Taqrir Akramin bin Khalid appeared on behalf of the applicants.

[5] Prior to this the applicants had filed a *perakuan segera* or certificate of urgency for the application to be expedited (encl 3). The significance of the reasons behind the *perakuan segera* will become apparent later in this judgment. The reason for the *perakuan segera* reads as follows:

(a) harta pusaka si mati telah lama tidak ditadbirkan sejak tahun 1980 dan perlu dengan segera ditadbirkan dan dibahagikan untuk kepentingan waris-waris si mati yang berhak ke atas harta pusaka tersebut;

(b) pemohon juga telah menyelesaikan bayaran baiki harga jualan sebanyak RM2,370,135 (Ringgit Malaysia Dua Juta Tiga Ratus Tujuh Puluh Ribu dan Satu Ratus Tiga Puluh Lima Sahaja) pada 10 Disember 2015 dan pendengaran kes ini perlu disegerakan bagi memastikan pemohon tidak menanggung sebarang kerugian dan mendapat hak yang sewajarnya;

(c) pemohon juga adalah wasi yang sah bagi wasiat Ponnamal a/p Ramasamy Pillai (No KP 2492551), si mati, yang bertarikh 21 November 1980 dan wajarlah mahkamah mempercepatkan pendengaran kes ini bagi menjalankan amanah yang telah diberikan oleh si mati;

(d) pemohon dalam tindakan ini memaklumkan bahawa pemohon juga menetap di No 49A, Anzac Avenue Sydney 2114, Australia dan akan pulang ke Negara tersebut pasda 20 April 2018 (No Pasport A 30418509) dan wajarlah mahkamah mempercepatkan pendengaran kes ini sebelum tarikh keberangkatan pemohon ke Australia iaitu pada 20 April 2018; dan

(e) sekiranya tarikh pendengaran tidak ditetapkan awal maka perlaksanaan dan/atau pentadbiran harta pusaka simati akan tertangguh lebih lama.

[6] What can be understood from the *perakuan segera* was that the applicants were the administrators of the estate of the late Ponnamal a/p Ramasamy Pillai. The hearing of encl 1 should be expedited for the purpose of the efficient running of the estate of the late Ponnamal and for the benefit of the beneficiaries who are entitled to the properties in the said estate.

[7] After perusing the originating summons and the affidavit in support and the *afidavit tambahan* of the applicants. I was of the view that the matter should be heard inter parte rather than ex parte. The reason being that there were a considerable number of lands involved and there were several caveators including the second respondent. There was also litigation concerning the lands going back to 1982. In such circumstances, I was of the opinion the all parties come before the court to be heard prior to any order being made in respect of encl 1.

[8] This court then instructed that all cause papers and relevant documents be served on the second respondent and the other caveators and that they be informed of the next date. The matter was then adjourned to 24 April 2018. The matter was further adjourned to 7 May 2018 because of 'short service' of the documents. The court instructed then counsel for the applicants to inform the parties by letter of the next hearing date, that is in 15 May 2018 as well as to file an affidavit to that effect. On 15 May 2018 counsel informed the court that the letters informing the caveators of the hearing date on 15 May 2018 had been sent. The affidavits of service of one Gabriel Yushua a/l Moses are in encls 5 and 7.

[9] The second respondent and the other caveators failed to attend court on 15 May 2018. Counsel for the applicants then prayed for an order in terms for encl 1. Consequently, after perusing the affidavit in support and submissions this court allowed encl 1.

[10] Soon thereafter the applicants transferred two lots of the lands, namely Lots 4805 and 4806 into their own names and not as administrators. The applicants then commenced to sell the two lots to one Sunderajan a/l Subramaniam who then lodged caveats on the lands on 26 June 2018. This can be seen in encl 15 at p 116.

[11] It was not disputed that the second respondent was not the only one who complained about not receiving the documents in respect of encl 1. The other caveators also made similar complaints.

[12] On 19 July 2018 this court received a letter dated 18 July 2018 from one of the caveators namely Mr Iruthaya Raj a/l Anthony Muthu Nadar, stating that had never received the documents pertaining to this matter although the court had instructed the documents be served on all the parties and the matter be heard inter parte. He claimed that the acknowledgement of receipt bearing his firm's stamp was forged. He then applied to intervene to set aside the 15 May 2018 order (encl 12). A police report was also lodged. This court allowed encl 12 on 3 January 2019.

[13] Another caveator Anandaraju a/l A Mookapilai, had made a similar complaint as can be seen in his affidavit in encl 102.

[14] As stated earlier the second respondent had applied to intervene and set aside dated 15 May 2018 order. On 6 November 2019, his application was allowed (see encl 93). The applicants appealed from this decision.

SUBMISSION BY THE SECOND RESPONDENT

[15] The second respondent represented himself and argued that there was fraud involved in the obtaining of the 15 May 2018 order. He states that he had never received the the cause papers and documents pertaining to the application in encl 1. As evidence of this he checked the 'tracking number 1' provided by the applicants in the affidavit of service and found that the documents which he was supposed to receive at his address in Klang, Selangor never in fact left Ipoh.

[16] He then referred to the affidavits of one Gabriel Youshua a/l Moses in encls 5 and 7 which according to him was an attempt to give the false impression that the documents were sent and served when actually they were not. A police reports was lodged by the second respondent to this effect.

[17] An insight in the second respondent's complaint after the 15 May 2018 order was made known to him can be found in his affidavit in support at paras 7, 8, 9 and 10 in encl 15 which states as follows:

> [7] Apabila meneliti perintah bertarikh 15.05.2018 tersebut, perintah tersebut juga menyatakan bahawa Tetuan Taqrir Akramin & Co yang merupakan peguamcara pemohon-pemohon pada masa itu telah menghantar satu surat bagi memaklumkan tarikh bicara bertarikh 26.04.2018 kepada saya, pencelah yang dicadangkan di sini, Iruthaya Raj a/l Anthony Muthu Nadar, Anandaraju a/l Mookapillai dan Mookapillai Sdn Bhd yang mana kononnya masing-masing telah mengakui penerimaanya boleh diperhatikan di perintah mahkamah bertarikh 15.05.2018 seperti di lampirkan dan ditandakan sebagai ekshibit PSV-1 di m/s 2.
>
> [8] Saya terperanjat kerana tidak pernah menerima apa-apa surat daripada Tetuan Taqrir Akramin & Co dan kemudiannya membuat satu carian fail untuk

mendapatkan salinan surat yang kononnya dihantar kepada saya dan pengkaveat kedua dan ketiga yang juga kononnya telah diakui penerimaannya. Salinan surat yang kononnya di hantar kepada saya, pengkaveat kedua dan ketiga, bukti pengeposan dan pengakuan penerimaan kini dilampirkan dan ditanda sebagai ekshibit PSV-1 di m/s 119–127.

[9] Apabila meneliti surat-surat tersebut yang kononnya di hantar telah di akui penerimaannya, boleh dilihat seperti yang dilampirkan di ekshibit PSV-1 di m/s 121, 124 dan 127 di mana ketiga-tiga surat tersebut kononnya di terima oleh saya, pada hari yang sama. Saya sekali lagi ingin menegaskan bahawa tidak pernah menerima surat tersebut, No Kad Pengenalan yang tertulis juga bukan merupakan No Kad Pengenalan saya dan tandatangan saya telah dipalsukan di atas kad AR. *Saya kemudiannya membuat satu repot polis. Sesalinan repot polis saya dilampirkan dan ditanda sebagai ekshibit PSV-1 di m/s 128*.

[10] *Saya juga menyemak nombor pengesanan (tracking number) yang dilampirkan oleh pemohon-pemohon seperti di ekshibit PSV-1 di m/s 120, 123 dan 126 di laman web pos malaysia, ia menunjukkan surat tersebut yang memaklumkan tarikh bicara dalam tindakan ini tidak pernah keluar dari Ipoh manakala alamat pencelah yang dicadangkan yang ditunjukkan dalam surat tersebut adalah alamat yang berada di Klang.* Ini jelas menunjukkan pemohon-pemohon telah menyalahgunakan proses mahkamah dan menipu kepada mahkamah yang mulia ini. Sesalinan hasil semakan nombor pengesanan tersebut saya lampirkan dan bertanda sebagai ekshibit PSV-1 di m/s 129–131. (Emphasis added.)

[18] The 15 May 2018 order referred to by the second respondent is reproduced below for ease of reference:

ATAS PERMOHONAN pihak-pihak pemohon melalui Saman Pemula bertarikh 28 Mac 2018 DAN SETELAH MEMBACA Afidavit Sokongan Bala Subramaniyam a/l Mookapillai yang telah diikrarkan pada 22 Mac 2018, Afidavit Sokongan Tambahan Bala Subramaniyam a/l Mookapillai yang diikrarkan pada 12 April 2018 serta Afidavit Penyampaian yang diikrarkan oleh Gabriel Youshua a/l Moses pada 14 Mei 2018 DAN DENGAN KEHADIRAN Taqrir Akramin Bin Khalib peguam pemohon-pemohon setelah Saman Pemula bertarikh 28 Mac 2018, Afidavit Sokongan Bala Subramaniyam a/l Mookapillai yang telah diikrarkan pada 22 Mac 2018, Afidavit Sokongan Tambahan Bala Subramaniyam a/l Mookapillai yang telah diikrarkan pada 12 April 2018 serta Surat Tetuan Taqrir Akramin & Co bertarikh 26.04.2018 bagi memaklumkan tarikh bicara dalam tindakan ini kesemuanya diserahkan keapda Iruthaya Raj a/l Anthony Muthu Nadar, Anandaraju a/l Mookapillai, Perumal A Sunderan a/l Vythilingan dan Mookapillai Sdn Bhd masing-masing telah diakui penerimaannya. (Emphasis added.)

[19] The second respondent stresses the fact that as encl 1 was never served on him and the others as ordered by the court. The affidavit of service in encls 5 and 7 had falsely stated that these documents were served. The second defendant had been deprived of their right to be heard because of the

deception. He contended that the applicants had in fact deceitfully represented to this court that the applicants application had been served on the second respondents and the others.

[20] He further contends that the order was irregularly obtained. It was made in his absence even though the court ordered that the matter be heard inter parties.

SUBMISSION BY THE APPLICANTS

[21] Learned counsel for the applicants had relied on the case of *Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals* [2008] 2 MLJ 622; [2008] 2 CLJ 121. Briefly the proposition in *Staghorn Sdn Bhd* is that an application to intervene after judgment has been given will not be entertained because the proceedings are no longer pending. The words 'at any stage of the proceedings ...' mean that there is a proceeding pending. Once the judgment is entered, the proceeding has come to an end. In this present case, learned counsel for the applicants argued that the order which had been obtained had been perfected as shown in encl 9. Proceedings were at an end and the second respondent should not be allowed to intervene. For ease of reference the relevant part of O 15 r 6(2) is reproduced here:

(1) ...

(2) Subject to this rule, *at any stage of the proceedings* in any cause or matter, the Court may on such terms as it thinks just and either of its own motion or on application:

1(a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;

2(b) order any of the following persons to be added as a party, namely:

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which, in the opinion of the Court, would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

[22] Learned counsel for the second respondent also argued that the second respondent did not have a caveatable interest and therefore the caveat should not be reinstated.

A FINDINGS OF THIS COURT

[23] Based on the particular facts of this case, I am of the view that *Staghorn Sdn Bhd and other appeals* is not applicable to the present case, I say this because this court had from the onset, ordered that encl 1 to proceed inter parte and that the second respondent together with the other caveators be made parties to the proceedings. It was because of the representation or rather misrepresentation made to this court that the encl 1 application had been served and due to the absence of the second respondent and the others on 15 May 2018 that the court gave an order in terms of encl 1 for the removal of the caveats.

[24] I am of the view that to deprive the second respondent the right to intervene in this proceedings would ignore the very purpose of this court had ordered the matter be heard inter parte in the first place and for the caveators including the second respondent be given an opportunity to be heard. To do otherwise would also be to condone any misrepresentation made with regards to the service of encl 1 on the second respondent. It is undeniable that but for the misrepresentation perpetrated on this court the second defendant and the other caveators would have been parties to this proceeding from the beginning.

[25] I have also not lost sight of the fact that the caveat which the applicants applied to cancel was lodged by the second respondent himself. This caveat was lodged back in 29 September 2017. In the Borang 19B of the National Land Code he gave the following reasons for lodging the caveats:

> *Saya mempunyai surat kuasa wakil daripada ibu saya Pathmini a/p Mookapillai (No KP 600508–05–5010) untuk memasukkan kaveat ini. Ibu saya merupakah seorang benefisiary kepada tanah-tanah tersebut dibawah wasiat mendiang ibunya Parariappan a/l Aranasalam Pillay.* Pada 24 November 2015, Mahkamah Persekutuan telah mengarahkan Parariappan a/l Arasalam Pillay (No KP 411116–08–5197) untuk memindah milik tanah tersebut kepada harta pusaka Ponnamal a/p Ramasamy. Pada 2 Ogos 2017 terdapat satu percubaan pindah milik tanah-tanah tersebut kepada nama Balasubramaniyam a/l Mookapillai dan Vijayalatchumi a/p Mookapillai. Pindah milik ini satu penipuan kerana surat kuasa pentadbiran harta pusaka Ponnamal a/p Ramasamy belum dikeluarkan oleh Mahkamah. Malah Balasubramaniam a/l Mookapillai dan Vijayalatchumi a/p Mookapillai telah disingkirkan oleh mahkamah dariapda menjadi wasi-wasi harta pusaka Ponnamal a/p Ramasamy.

[26] It was never contested that the second respondent had a power of attorney to represent his mother who was a beneficiary to the estate of the late Ponnamal a/p Ramasamy. In any event the issue of caveatable interest was to be deliberated when the matter would be heard inter parte which, of course, never happened.

[27] The second respondent had emphasised the unusual haste in which Lots 4805 and 4806 were transferred and registered in the applicants personal names. Almost as soon as the land was transferred to the names of the applicants an agreement to sell the same two lots was entered into with one Sunderajan a/l Subramaniam. He then lodged caveats to protect his interest pending the completion of the sale.

[28] The applicant's actions would seem to run contrary to the reasons put forth in the *perakuan segera* (encl 3) which was to have an expedited hearing date for the benefit of the estate of Ponnamal a/p Ramasamy and the effective management of the estate for the benefit of the beneficiaries. In this respect this court had observed that when the lands were transferred they were registered into the applicant's own names and not as administrators of the estate of Ponnamal a/p Ramasamy. Further when Lots 4805 and 4806 were contracted to be sold to Sunderajan a/l Subramaniam there was no evidence the beneficiaries were informed or consulted in respect of the sale.

[29] Based on the fact that there was deception in the effecting of the service of encl 1 and the conduct of the applicants after the caveats were removed, I am of the view that such a situation would warrant this court to set aside the 15 May 2018 order and revert to the position before the said order was given.

[30] Bearing in mind that the 15 May 2018 order was essentially an ex parte order where the second respondent was never given a chance to be heard. I therefore agree with the second respondent's contention that the 5 May 2018 order should be set aside *ex debito justitiae*.

[31] By virtue of O 32 r 6 of the Rules of Court this court has the discretion to set aside such an order. Order 32 r 6 reads as follows:

> Any order made ex parte may be set aside (see O 32 r 6 of the Rules of Court 2012) by the same judge or court which granted the ex parte order, or by a different judge of the same court which granted the ex parte order. For that clear position in law, we need only to refer to the recent decision of *Malaysian International Trading Corporation Sdn Bhd v RHB Bank Bhd* [2016] 2 MLJ 457; [2016] 2 CLJ 717, where it was held by the Federal Court per Suriyadi FCJ, delivering the judgment of the majority, that 'jurisdictionally, a court under O 32 r 6 of the RHC or under O 92 of the RHC, may set aside any ex parte order'. Under O 32 r 6 of the Rules of Court 2012, any judge of the same court has jurisdiction to set aside any ex parte order. 'This is necessary in the interest of justice as the party who was not heard may wish to object to the order (Jeffrey Pinsler, *Singapore Court Practice 2017* (Vol 1) at para 32/3/4)'.

[32] I am also of the view that this court is not functus officio as the rights of the second respondent remained subsisting as this court was deprived of hearing the matter inter parte.

[33] I am supported in this view by the case of *Lai Cheng Ooi (f) (the executrix of the estate of Lee Tain Tshung @ Lee Thien Chiung, deceased) v Lim San Peen (liquidator for Naslei Enterprise Sdn Bhd) & Anor and other appeals* [2017] 6 MLJ 218; [2017] 1 LNS 1390 where the Court of Appeal had this to say in respect of the setting aside of ex parte orders:

> In this connection, we hasten to observe that any ex parte order is liable to be set aside by the party who had been served with such an order or by any party which is affected by such order. *In setting aside such an order, the court is certainly not functus officio as the right of the party affected to be heard remains subsisting.* It is not mandatory, as the appellant appears to suggest, to appeal or to file separate proceedings to impeach the ex-parte order. *In summary, orders obtained in breach of the rules of natural justice can be set aside in the same proceedings or in collateral proceedings ex debito justitiae (see Selvam Holdings (M) Sdn Bhd v Grant Kenyon & Eckhardt Sdn Bhd; (BSN Commercial Bank (M) Bhd & Ors, interveners) [2000] 3 MLJ 201; [2000] 3 CLJ 16 ('Selvam Holdings').* (Emphasis added.)

[34] On appeal, the Federal Court in *Lai Cheng Ooi v Lim San Peen & Anor and other appeals* [2018] 5 MLJ 195; [2018] 7 CLJ 145 affirmed the decision of the Court of Appeal when it held:

> Any order made ex parte may be set aside (see O 32 r 6 of the Rules of Court 2012) by the same judge or court which granted the ex parte order, or by a different judge of the same court which granted the ex parte order. For that clear position in law, we need only to refer to the recent decision of *Malaysian International Trading Corporation Sdn Bhd v RHB Bank Bhd* [2016] 2 MLJ 457; [2016] 2 CLJ 717, where it was held by the Federal Court per Suriyadi FCJ, delivering the judgment of the majority, that 'jurisdictionally, a court under O 32 r 6 of the RHC or under O 92 of the RHC, may set aside any ex parte order'. *Under O 32 r 6 of the Rules of Court 2012, any judge of the same court has jurisdiction to set aside any ex parte order.* 'This is necessary in the interest of justice as the party who was not heard may wish to object to the order (Jeffrey Pinsler, *Singapore Court Practice 2017* (Vol 1) at para 32/3/4)'.

CONCLUSION

[35] Based on the reasons adumbrated above, I allow encl 14 for the second respondent to intervene and also set aside the 15 May 2018 order.

Application in encl 14 allowed and order of 15 May 2018 in encl 9 set aside.

Reported by Mohd Kamarul Anwar